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Attorneys for Fire Victim Claimants, including Troy Rogers, Carrie Rogers, and Travis Rogers

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

<i>In re:</i>	) Case No. 19-30088 (DM)
PG&E CORPORATION	) Chapter 11
-and-	) (Lead Case)
	) (Jointly Administered)
PACIFIC GAS AND ELECTRIC COMPANY	) MOTION TO ALLOW/DEEM TIMELY
Debtors.	) LATE FILING OF PROOF OF CLAIM
<input type="checkbox"/> Affects PG&E Corporation	) BY TROY ROGERS, CARRIE ROGERS,
<input type="checkbox"/> Affects Pacific Gas & Electric	) AND TRAVIS ROGERS;
<input checked="" type="checkbox"/> Affects Both Debtors	) MEMORANDUM OF POINTS AND
	) AUTHORITIES IN SUPPORT
<i>All papers shall be filed in the Lead Case,</i>	) THEREOF; DECLARATION OF
<i>No. 19-30088 (DM)</i>	) CARRIE ROGERS
	) Date: August 9, 2022
	) Time: 10:00 a.m.
	) Place: To Be Held Telephonically
	) United States Bankruptcy Court
	) Courtroom 17
	) 450 Golden Gate Avenue
	) 16 th Floor
	) San Francisco, CA
	Judge: Honorable Dennis Montali
	Objection Deadline: August 2, 2022

The Kane Law Firm respectfully files this motion to allow the late filing of a proof of claim and deem the proof of claim as having been timely filed for the moving party herein, Troy Rogers, Carrie Rogers, and Travis Rogers.

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I.

SUMMARY OF ARGUMENT

A proof of claim may be deemed timely upon a showing of excusable neglect and lack of prejudice. The Supreme Court in *Pioneer Investment Services v. Brunswick Associated Ltd. Partnership*, 507 U.S. 380 (1993) set forth the factors that must be considered in ruling on whether a late claim should be allowed in the context of a bankruptcy filing. These factors to be considered are as follows:

1. The danger of prejudice to the Debtor,
2. The length of delay and its potential impact on judicial proceedings,
3. The reason for the delay, including whether it was within the reasonable control of the movant, and
4. Whether the movant acted in good faith. *Pioneer Investment Services, supra* at 395.

In this case, Troy Rogers and Carrie Rogers, who are husband and wife, and their adult son, Travis Rogers, were living at the house that they own located at 5086 Foster Road, Paradise, CA at the time of the fire. Other family members gathered at the Rogers family home and evacuated in groups. It took nearly six hours for everyone to arrive at their destination in Chico, California. The Rogers family was unable to return to their home for several weeks. Upon returning, they were fortunate to find that their home had not burned. However, many outbuildings including a shed, barn and animal enclosures burned with all their contents. The Rogers lost personal property and suffered emotional distress because of the fire.

As set forth below, the movants meet all these factors. Indeed, if this motion is *not* granted, it is the movants who will suffer substantial prejudice.

II.

PROCEDURAL BACKGROUND

On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric Company (“Debtors”) filed a voluntary Chapter 11 Petition. *See* Dkt. 1. On July 2, 2019, the Court entered an order establishing October 21, 2019 (“the bar date”) as the deadline for Fire

1 Victim claimants to file proofs of claim in this bankruptcy. *See* Dkt. 2806. That deadline was
2 extended to December 31, 2019(“the “extended bar date.”). *See* Dkt. 4872.

3 III.

4 FACTUAL BACKGROUND

5 Troy and Carrie Rogers, who are married, lived at their home that they owe located at
6 5086 Foster Road, Paradise, California with their adult son, Travis Rogers. All three claimants
7 lost real and personal property and suffered emotional distress because of the fire. The Rogers
8 evacuated to Chico and remained there for several weeks before being able to return to their home
9 in Paradise. They were fortunate that their home did not burn. However, they discovered that the
10 outbuildings had burned with their contents. They lost a 1965 Chevy truck, appliances,
11 furnishings, clothing, and other items that were stored in the outbuildings. They also suffered
12 emotional distress on account of the fire. They did not originally file a claim because they
13 mistakenly thought that their insurance would cover all their losses. However, they now know
14 that their insurance has not paid for all their losses, including emotional distress and the cost of
15 displacement. Once they learned that they could file a late claim, they immediately contacted
16 counsel and requested that a late claim be filed. They have filed a Claim. The Claim was
17 assigned Number 108345 and submitted as Exhibit A to this motion.

18 IV.

19 ARGUMENT

20 The time in which to make claims in a Chapter 11 Bankruptcy may be extended by motion
21 based on excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

22 (b) Enlargement.

23 (1) *In general.* Except as provided in paragraphs (2) and (3) of this subdivision,
24 when an act is required or allowed to be done at or within a specified period by
25 these rules or by a notice given thereunder or by order of court, the court for cause
26 shown may at any time in its discretion (1) with or without motion or notice order
27 the period enlarged if the request therefor is made before the expiration of the
28 period originally prescribed or as extended by a previous order or (2) **on motion
made after the expiration of the specified period permit the act to be done
where the failure to act was the result of excusable neglect.**

Fed R. Bank. Proc. 9006.(b)(1). *Emphasis supplied.*

Determination of excusable neglect has been interpreted by the United States Supreme

1 Court as an equitable consideration.

2 “We conclude the determination at bottom an equitable one, taking account of all relevant
3 circumstances surrounding the party’s omission. These include. . .the danger of prejudice
4 to the debtor, the length of the delay and its potential impact on judicial proceedings, the
5 reason for the delay, including whether it was within the reasonable control of the movant,
6 and whether the movant acted in good faith.”*Pioneer Inv. Servs v. Brunswick Assoc.*
7 *Ltd.P’ship*, 507 U.S. 380, 395 (1993)

8 Here, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the
9 distribution process, no prejudice will result. *In re Sacred Heart Hosp.* 186 B.R. 891, 897.
10 (“Exactly how the debtor’s assets are distributed is ultimately of little consequence to the
11 debtor, so long as the claim is not filed so late as to disrupt the distribution process.”)

12 Further, the delay is not significant. The Trust has only completed determinations (not
13 reconsiderations or appeals) on approximately 50% of all claims. Allowing the late claim will not
14 delay the proceedings.

15 The reason for the delay in filing a claim was that Troy Rogers, Carrie Rogers and Travis
16 Rogers mistakenly thought that insurance would cover all of their losses, not only for property
17 loss but also for emotional distress and displacement. Excusable neglect will be found even
18 where sophisticated attorneys miss a deadline. *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450
19 F.3d 996, 1006 (9th Cir. 2006). The case for excusable neglect is even more compelling when the
20 mistake was made by an unrepresented layperson. *Id.*

21 Further, Troy Rogers, Carrie Rogers and Travis Rogers acted in good faith. The failure to
22 file was not based on litigation tactics where a party deliberately misses a deadline to gain
23 advantage. (See e.g., *Venice Baking Co. v. Sophast Sales &Mkg. LLC* 2016 U.S. Dist LEXIS
24 141533 where relief was denied because counsel purposefully chose not to oppose a motion as a
25 litigation tactic). Here the delay was inadvertent and the movants’ lack of understanding of the
26 claims process after a trust fund had already been established to satisfy the claim.

27 And, finally, the likelihood of injustice is great if this claim is not permitted. Troy Rogers,
28 Carrie Rogers, and Travis Rogers are Camp Fire victims whose primary avenue for compensation
is through this bankruptcy.

V.

CONCLUSION

For the reasons set forth above, Movant respectfully requests that this Court enter an Order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

1. Granting the Motion;
2. Finding that the Movants be allowed to file a Proof of Claim and deem it as having been timely filed;
3. Granting such other or further relief as the Court deems just and proper.

Dated: July 18, 2022.

Respectfully submitted,

THE KANE LAW FIRM

By: _____/s/_____

BONNIE E. KANE

Attorneys for Troy Rogers, Carrie Rogers and Travis Rogers